

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF
STATE OF MISSISSIPPI

VERSUS CIVIL ACTION NO. 3:12-cv-00790-HTW-LGI

THE CITY OF JACKSON, MISSISSIPPI, DEFENDANT
JXN WATER

STATUS CONFERENCE
BEFORE THE HONORABLE HENRY T. WINGATE,
UNITED STATES DISTRICT COURT JUDGE,
MAY 28, 2024,
JACKSON, MISSISSIPPI

(APPEARANCES NOTED HEREIN.)

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9 AYANNA HILL, ACLU (VIA ZOOM)

10 RACHEL FRISK, USDA (VIA ZOOM)

11 LORI LASHA SHERMAN (VIA ZOOM)

12 CHRISTIN WILLIAMS (VIA ZOOM)

13 AZANDE WILLIAMS, DHS (VIA ZOOM)

14 PATRICK BLACK, DHS (VIA ZOOM)

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1 **IN OPEN COURT, MAY 28, 2024**

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3 THE COURT: We are still trying to work out our
4 difficulties, and we have not been able to complete that.
5 So we are going to try audio on the telephone to see if it
6 works. We are not sure it is. We don't know what the
7 problem is, but we have been having some technical
8 difficulties for a while now.

9 So let's try to see what we can do. If we can't do
10 this comfortably, then I will just have to reschedule this.
11 But it's important that we get everything down on the
12 record, and if Caroline here has difficulty picking up the
13 speakers, then that's what I'll have to do.

14 So we have been waiting since, I guess, about 9:30 to
15 get this situation resolved. That's before you all got
16 here. But we found out this morning that we had a problem,
17 and our technical people have been working since about that
18 time or maybe even a little before that. But certainly they
19 have been working since 9:30. And Terri has been working
20 longer than that because she's the one who detected the
21 problem when she was getting the courtroom ready.

22 So, Terri, let's call the case and see how far we can
23 get.

24 THE COURTROOM DEPUTY: Your Honor, this is United
25 States versus City of Jackson, Civil Action Number

1 3:12-cv-790-HTW-LGI, as well as United States of America
2 versus City of Jackson, Civil Action Number
3 3:22-cv-686-HTW-LGI, and we are here this morning for a
4 status conference.

5 At this time I am going to ask the parties to state
6 their names for the record starting with plaintiffs. We are
7 going to start with the people that are actually in the
8 courtroom.

9 MR. FINGERHOOD: Good morning, Your Honor. Karl
10 Fingerhood from the U.S. Department of Justice,
11 Environmental Enforcement Section.

12 MS. ANGELA WILLIAMS: Good morning, Your Honor. Angela
13 Williams from the -- with the U.S. Attorney's Office for the
14 United States.

15 THE COURT: All right.

16 MR. FURRH: Good morning, Your Honor. Roy Furrh with
17 the Mississippi Department of Environmental Quality.

18 THE COURT: All right.

19 MS. HODGES: Good morning. Donna Hodges with the
20 Mississippi Department of Environmental Quality.

21 THE COURT: All right. Good morning to you.

22 MS. WILSON: Good morning. Malissa Wilson on behalf of
23 the interim third-party manager.

24 THE COURT: All right. Good morning.

25 MR. WILLIAMSON: Good morning, Your Honor. Terry

1 Williamson on the behalf of the City of Jackson.

2 THE COURT: All right. And good morning to you.

3 MS. HILL: Good morning, Your Honor. Ayanna Hill with
4 the ACLU representing the intervenor plaintiffs.

5 THE COURT: All right. Thank you.

6 All right. Do we have all of the plaintiffs?

7 Okay. Now let's go to the other party.

8 THE COURTROOM DEPUTY: Can we have those that are on
9 the teleconference to introduce themselves for the record
10 starting with the plaintiff?

11 MS. MO: Good morning, Your Honor. This is Angela Mo
12 with the U.S. Department of Justice, and I also have here on
13 the phone Ezekiel Peterson with the U.S. Department of
14 Justice; we have Rachel Frisk from the U.S. Department of
15 Agriculture; and we have from the U.S. Environmental
16 Protection Agency Michelle Wetherington, Suzanne Armor, and
17 Jim Vinch.

18 THE COURT: Good morning to all of you.

19 Next?

20 MS. SHERMAN: Good morning, Your Honor. This is Lori
21 Sherman with FORWARD JUSTICE on behalf of the intervenor
22 plaintiffs.

23 THE COURT: All right. Next?

24 MS. CARR: Good morning, Your Honor. Sheridan Carr on
25 behalf of the City of Jackson.

1 THE COURT: All right. Thank you.

2 MS. RICHARDSON: Your Honor, Susan Richardson with
3 Patrick Townsend, on behalf of the City of Jackson.

4 THE COURT: Thank you.

5 MR. CALAMITA: Your Honor, Paul Calamita on behalf of
6 the interim third-party manager.

7 THE COURT: All right. Good morning to you.

8 MR. BLACK: Your Honor, this is Patrick Black, general
9 counsel for the Mississippi Department of Human Services.
10 We are nonparties.

11 MS. ASONDA WILLIAMS: Asonda Williams with the
12 Mississippi Department of Human Services.

13 THE COURT: All right. Thank you.

14 MS. CHRISTIN WILLIAMS: Good morning. This is -- Your
15 Honor, this is Christin Williams on behalf of the
16 Mississippi State Department of Health. We are also a
17 nonparty.

18 THE COURT: All right.

19 All right. We're ready to get started. This is a
20 status conference. Am I missing anyone who was expected to
21 be on the line? All right. I hear no answers.

22 I called this conference to determine where we are on
23 the issue involving the identification of SNAP
24 beneficiaries.

25 Ms. Williams, you communicated with the Court at one

1 point when the Court asked who was or would be the proper
2 party to speak on behalf of the Government's issue with
3 regard to SNAP identifications. Am I correct?

4 MS. ANGELA WILLIAMS: Yes, Your Honor, the Court is
5 correct.

6 THE COURT: Okay. Now, speak directly into the
7 microphone, and tell me, then, who is the individual who you
8 earmarked or identified as being the person who would be
9 able to clarify the Government's position on production of
10 the list of persons who are SNAP beneficiaries.

11 MS. ANGELA WILLIAMS: Your Honor, from a factual
12 perspective, the Government identified Rachel Frisk. She is
13 the director for the Program Administration and Nutrition
14 Division of the Supplemental Nutrition Assistance Program at
15 the United States Department of Agriculture, and she also
16 submitted two declarations to the Court.

17 THE COURT: Okay. Now, before I turn to the
18 declarations and to that person, I noticed that Mr. Henifin
19 is not present. His counsel is. And so --

20 MS. WILSON: Yes, Your Honor.

21 THE COURT: -- is he expected to be here?

22 MS. WILSON: No, he is not, Your Honor.

23 MR. CALAMITA: Your Honor, this is Paul Calamita on
24 behalf of Mr. Henifin.

25 He is on -- currently on an airplane. Given the short

1 notice for this, he was unable to join us this morning.

2 THE COURT: Okay. So then you are waiving his
3 presence?

4 MR. CALAMITA: Yes, Your Honor.

5 THE COURT: Okay. And you're agreeing with that?

6 MS. WILSON: Yes, we agree. I agree, Your Honor.

7 THE COURT: Okay. All right. Thank you so much.

8 Now then, Ms. Williams, what is the status of this
9 controversy relative to the production of documents
10 identifying SNAP recipients in Mississippi?

11 MS. ANGELA WILLIAMS: Your Honor, the USD- -- the
12 United States on behalf of the USDA submitted a letter to
13 the Court notifying the Court of the information that USDA
14 had, which we did not believe is responsive to the Court's
15 order.

16 The United States also filed a motion to stay the
17 Court's order for -- so that the United States could
18 determine whether and how -- if it would appeal.

19 We also advised the Court last week that the Solicitor
20 General had given authority to appeal or seek appellate
21 review of the Court's decision, and so we filed a motion to
22 stay pending that.

23 And then on Friday, the interim third-party manager
24 indicated that he did not have any opposition to the stay if
25 the United States was going to appeal by the 31st of May,

1 which the United States then indicated that it would. And
2 so that is where we are.

3 THE COURT: I don't understand the United States's
4 position relative to a potential appeal of the Court's
5 order. So what I want is someone to explain to me the
6 United States's position before we get to that point of an
7 appeal, because maybe there is some way we can resolve the
8 issue without that consequence.

9 So who is that person I need to talk to?

10 MS. ANGELA WILLIAMS: Mr. Fingerhood was prepared to
11 speak to the Court from a legal perspective. If the Court
12 had any further questions, we did have Ms. Frisk available
13 for the Court from a factual perspective.

14 THE COURT: Now, who is the person you identified
15 earlier who is going to speak on behalf of the Government?

16 MS. ANGELA WILLIAMS: Ms. Frisk is the -- is the person
17 we identified earlier. She is not a lawyer. She is the
18 director of the program -- the director for Program
19 Administration and Nutrition Division of the Supplemental
20 Nutrition Assistance Program.

21 THE COURT: So then Mr. Fingerhood is the person who
22 should provide the legal position that the United States is
23 taking on this matter?

24 MS. ANGELA WILLIAMS: Yes, Your Honor.

25 THE COURT: Mr. Fingerhood, is that correct?

1 MR. FINGERHOOD: Yes, Your Honor.

2 THE COURT: Now, Mr. Fingerhood, would you go to the
3 podium then? Take any notes you need, because I would like
4 to have a thorough communication with you on this matter.

5 MR. FINGERHOOD: Certainly. Good morning, Your Honor.
6 Karl Fingerhood.

7 THE COURT: Good morning, Mr. Fingerhood.

8 THE COURTROOM DEPUTY: Mr. Fingerhood, can you let the
9 lectern up some?

10 MR. FINGERHOOD: Good morning, Your Honor. Karl
11 Fingerhood, U.S. Department of Justice, Environmental
12 Enforcement Section.

13 As was indicated before, the third-party manager does
14 not oppose a stay.

15 THE COURT: But now, the stay was only until Friday; is
16 that correct?

17 MR. FINGERHOOD: Right. Well, it -- to file any notice
18 of appeal, and then it would be pending the appellate
19 procedure.

20 THE COURT: So what's the benefit of a stay? I don't
21 quite understand that.

22 MR. FINGERHOOD: Well, I think we, respectfully, have a
23 disagreement with whether or not the third-party manager can
24 be considered a federal assistance program as a matter of
25 law, and I think that is the issue that would be taken up on

1 appeal.

2 THE COURT: Now, aren't you with EPA?

3 MR. FINGERHOOD: EPA is my client. I'm with the
4 Department of Justice.

5 THE COURT: So how did you get wrapped up in this
6 matter?

7 MR. FINGERHOOD: Well, there was the motion that was
8 filed, and -- and perhaps the civil division may have gotten
9 involved earlier. But we ended up briefing the matter, and
10 U.S. Department of Agriculture is the federal agency that
11 has oversight of the SNAP program. And so, you know, we --
12 we ended up doing the briefing with assistance from counsel
13 in their office, and, you know, that's how we got to where
14 we are today.

15 THE COURT: Well, clarify your involvement here, if you
16 don't mind, Mr. Fingerhood, because I thought that you were
17 with EPA and EPA was concerned with rectifying this matter
18 here in the City of Jackson.

19 MR. FINGERHOOD: Well, I represent the EPA. In this
20 particular issue, I'm representing the U.S. Department of
21 Agriculture.

22 THE COURT: Now, did they specially appoint you?

23 MR. FINGERHOOD: No.

24 THE COURT: So how did you end up being on the
25 agricultural side?

1 MR. FINGERHOOD: Well, the motion was filed, and the
2 Department of Justice needed to respond on behalf of the
3 Federal Government. So since Ms. Williams and Ms. Mo and
4 myself were already involved in the case, we were the ones
5 who ended up working with USDA and filing the -- the legal
6 papers.

7 THE COURT: USDA doesn't have attorneys?

8 MR. FINGERHOOD: They do. But like EPA, I don't
9 believe the USDA attorneys can appear in federal court.
10 Usually it's the Department of Justice who would represent
11 them in federal court.

12 THE COURT: The last two or three occasions -- maybe
13 two or three, I don't know -- it appears that when you have
14 appeared, you have been in opposition to the third-party
15 manager or what the Court hopes to achieve by its efforts
16 here on this litigation.

17 MR. FINGERHOOD: Well, with respect to the matter that
18 is presently before the Court, we have indicated numerous
19 times that we're willing to -- we don't have an opposition
20 to having SNAP participants opt in. What -- our concern is
21 that their private information is being given to someone
22 without their consent, and so...

23 THE COURT: All right. Now, before you get to that --

24 MR. FINGERHOOD: Okay.

25 THE COURT: -- I'm still trying to clarify your

1 presence and position that you're taking. Perhaps, that's a
2 valid position. I'm not saying that it's not. But I was
3 kind of surprised to see you stand to state what the
4 opposition is, because it would appear to me that when we
5 have had opposition from the Government, it has always come
6 through you. And so then I'm wondering what your position
7 is on this dilemma concerning the City of Jackson.

8 The last time you were here, we were in a dispute on --
9 on money being released and whether there was some
10 difficulty on that. And then before that, there was some
11 other issue -- I need to think back for a moment -- but you
12 appeared to be on the other side of where the people here --
13 here were.

14 So is there some particular reason why EPA would find
15 itself in opposition to the efforts being brought here on
16 behalf of the citizenry of Jackson in trying to get their
17 water issue straight?

18 MR. FINGERHOOD: Well, on this particular matter, I
19 don't think EPA has taken any position. I'm an attorney
20 with the Department of Justice. I represent EPA in this
21 matter. In this particular instance, I'm representing the
22 U.S. Department of Agriculture, but as an attorney with the
23 Department of Justice, my position is to make sure that the
24 laws of the United States are executed faithfully and
25 according to the law.

1 So I think last time the issue was -- you know, there
2 was a question of whether or not the Court had jurisdiction
3 because the administrative process had been played out, and
4 so that was the argument I made here.

5 There are concerns about the privacy of the SNAP
6 recipients' information, and so that's why I'm here today
7 representing that position.

8 THE COURT: Do you look for issues to contest these
9 matters so as to stall the efforts to resolve these water
10 issues?

11 MR. FINGERHOOD: No, I do not. And I think if you
12 would talk to the third-party manager and his counsel and
13 even counsel for the state agency, we've been in contact
14 from before the papers were filed to discuss other
15 alternatives that we thought would -- would work and not
16 violate the law, but those -- unfortunately, those
17 discussions didn't pan out.

18 THE COURT: For instance, Mr. Fingerhood, when I first
19 came in on the water case and then later took on the sewage
20 case, one of the first things that bothered me was that EPA
21 had done a consent order with the City of Jackson back when
22 this lawsuit -- back when the sewage case was filed. But,
23 nevertheless, that case sat there for 13 years, and nobody
24 seemed to care that the citizens in Jackson were suffering.

25 EPA didn't file a motion to hold the City in contempt,

1 and this all went on for 13 years until I picked it up, and
2 I voluntarily reached over and took the case so that it
3 could move.

4 So all that time, the case just sat there in limbo. So
5 EPA didn't have any real concern, it seems to me. And then
6 after I picked the case up and started pushing for some
7 resolution on the various matters, that's the first time
8 that the docket reflects anything from EPA since the lawsuit
9 was filed and since the consent order came in. Other than
10 that, nothing happened for that length of time. So now --

11 MR. FINGERHOOD: Your Honor --

12 THE COURT: So now, when EPA appears through you, it
13 has been a -- a representation which is contrary.

14 Now, again, some of it I wonder about. Just like the
15 last time we were here about the money, why the money
16 couldn't be released that we expected to be released so we
17 could get started. But then when we tried to put together
18 the water case and the sewage case, we had problems out of
19 EPA, and I heard from you on that, where it appeared that
20 you were negative in some degrees, and so then we had to
21 work through all of that.

22 So what I'm asking is, here you are now, and I did not
23 expect you to be the -- the standard-bearer, but here you
24 are again, and you have a barrier that you are telling us
25 that we need to observe. If there is a true legal barrier,

1 then certainly I want to do that.

2 And, in fact, I have in mind a potential solution to
3 this matter that I would like to throw out in just a moment
4 that might make everybody happy on this particular matter.
5 But I just cannot ignore the many times that EPA has
6 appeared, and it doesn't seem to me that EPA is being
7 necessarily helpful, but instead, EPA is telling us all of
8 the things we can't do and from time to time has threatened
9 to pull out of this agreement, that we will get to the
10 bottom of our problems, be able to resolve them.

11 So I understand the -- the nature of justice, having to
12 protect the citizenry. I don't quarrel with that. But,
13 nevertheless, the voice that's speaking has not said
14 anything for quite a while, and then when it does speak, it
15 seems to be negative. Instead of proposing positive
16 matters, it appears that what I'm hearing are negative
17 matters constantly. And so here I'm trying to work with my
18 third-party manager to try and move forward, and then we
19 hear from EPA on what we can't do, but I don't hear from EPA
20 what we should do, can do. Don't hear from that.

21 And keep in mind that the backdrop that this Court is
22 speaking against is a 13-year history where EPA did
23 absolutely nothing except let the citizens of Jackson
24 suffer.

25 So, now, if that description is incorrect or if I have

1 missed something that was more pronounced in a positive way
2 from EPA during this time period, instead of threatening
3 from time to time to pull out of this agreement, then,
4 Mr. Fingerhood, would you please tell me? Because I would
5 hate to be wrong about my assessment here.

6 So if there is something that I need to know, will you
7 please tell me, other than the raw statement that you have
8 made from time to time, is that as a representative of
9 justice, the Justice Department, that you have to be sure
10 that everything is done right.

11 Well, surely the other side of ensuring that things are
12 done right carries with it the possible knowledge of how to
13 do it right, since you started off as a party in the -- in
14 this litigation. So -- and I'm talking about the sewage
15 case especially.

16 Now, so then before we get to what I would hope to be a
17 resolution on the matter after I heard you tell me all of
18 the broken parts here, then can you tell me just where EPA
19 actually stands?

20 MR. FINGERHOOD: Well, first, I do want to go back to
21 the sewer consent decree. I was one of the attorneys
22 involved in negotiating that, along with Mr. Williamson,
23 who's in the courtroom here. I do think it was more -- the
24 consent decree was entered in 2013, so it was more of a
25 ten-year period, and I do think a review of the docket sheet

1 does show that at some point we did have several
2 conversations with the City and their counsel. And
3 Ms. Richardson is one of the attorneys on the phone, and we
4 had several meetings with them to try and get the City into
5 compliance. And then in order to, I guess, maybe increase
6 the awareness of the City's failure to comply with the
7 consent decree, we reopened the sewer case and started
8 filing regular joint status reports.

9 During that time, we were regularly meeting with the
10 City and determining, based on their financial situation,
11 what they could afford to do and how quickly they could do
12 it. There were meetings, not just with attorneys but also
13 with engineers and also financial experts, looking at what
14 the City could afford to pay.

15 This is -- predates the -- the interim stipulated order
16 on the Drinking Water Case where Congress appropriated some
17 additional funding for the City. So we had numerous
18 conversations. We were filing regular status reports with
19 Judge Lee. And so I would say that we were taking action.

20 As the Court knows, I've been here many times, and I
21 personally have a stake in seeing things succeed here. I
22 think everybody wants this to succeed, but we also have to
23 make sure that, you know, in doing that, we comply with the
24 laws of the United States.

25 THE COURT: These interim reports you're talking about

1 that you said you filed with Judge Lee when he had the case,
2 none of that is on record. It's not on the docket sheet.

3 MR. FINGERHOOD: I bel- -- they might be under the --
4 before the cases were combined, they may be on the older
5 entries, which I'm not sure were carried over to the
6 combined docket. But I have filed copies that I can provide
7 the Court if --

8 THE COURT: Could you provide those? Because I thought
9 I looked at the old documents, and all I saw was that the
10 case was filed, that there was a consent decree, and then
11 the rest of the docket is silent. There is nothing else on
12 it. That's what I have.

13 But, now, if you have some interim reports that you
14 filed in another court, then I would like to see them, if
15 you don't mind. Is that okay?

16 MR. FINGERHOOD: Oh, certainly.

17 THE COURT: Okay. Then I would like to see those. I
18 would like to see what was said during that time period.
19 And then if I see that you actually did file some matters in
20 another court, that even though the docket sheet remains
21 silent, then I'll alter my comments on what you all did
22 during that 13-year period. Because if you look at the
23 docket sheet, there's nothing except the case was filed and
24 that there was a consent decree between the City and EPA,
25 and that's all. There's nothing else on the docket sheet.

1 So now, having delved into that, let's move on. What I
2 want to know, then, is on this matter of the SNAP
3 identifiers, you have, in consult with the agriculture
4 department, raised an objection to releasing the identities
5 of those persons to Ted Henifin, correct? And you construe
6 that as a violation of the beneficiaries' privacies,
7 correct?

8 MR. FINGERHOOD: Yes, your honor.

9 THE COURT: Now, we all agree, and I think we would
10 agree without hesitation, that those beneficiaries of SNAP
11 benefits would be in favor of having their water bills
12 reduced. Now, that just seems to be common approach and
13 common sense, correct? So they would want to have the
14 benefits that we wanted to provide once we had their names
15 so that we would know to whom to provide the benefits.

16 Now -- one second.

17 (An off-the-record discussion was held.)

18 THE COURT: Now, back to where I was. So, then --
19 okay. I'm back on.

20 So, then, everyone agrees that they would want the
21 reduced rates. Now, do you have a suggestion as to how we
22 could do that?

23 MR. FINGERHOOD: Yes, Your Honor. As we have proposed
24 before, because there is a significant benefit to the
25 recipients, we think an opt-in program where they could

1 somehow fill out a postcard or something that would verify
2 that they're a SNAP recipient, that would be way that they
3 could opt in. It's not releasing their personal information
4 without their consent. They can essentially opt in, but in
5 exchange, they get that discount on their water bill.

6 And so that was something we proposed and think, you
7 know, with appropriate publicity and given the amount of
8 discount involved, that that would be something that would
9 be workable and comply with the law.

10 THE COURT: What do you think would be an acceptable
11 mode of communication from them? You named postcard. Would
12 a postcard be sufficient?

13 MR. FINGERHOOD: Well, first, let me just make a couple
14 points for the record. First of all, I want to clarify that
15 EPA doesn't have a role in the SNAP program, and so that's
16 why I said they have no position, that they don't oppose it
17 or support it. They have no role in SNAP. It's USDA.

18 The SNAP program is administered by the states. The
19 Federal Government provides the funding, so the State is the
20 one that has the information. And we did have joint
21 discussions between the -- the third-party manager and the
22 State about possible work-arounds that would allow people to
23 opt in, because, you know, the State -- and they're not a
24 party to this, but they are on the phone, and, you know,
25 they are probably in a better position to talk about the

1 mechanics.

2 But I think, you know -- just from my own, you know,
3 two cents' worth, I think there are probably ways that
4 people could opt in or could be something said in the bills
5 themselves that would advise people of this. As far as what
6 would be needed, I don't know. Maybe, like, they could send
7 in a Xerox of their -- I think the SNAP beneficiaries
8 actually receive, like, a -- it's almost like a credit card,
9 and so they could -- I mean, I don't know. I think the
10 people with the State would have more expertise, but I do
11 think there would be ways to do it that would not be a large
12 inconvenience but also protect the privacy of the people who
13 perhaps didn't want to participate or perhaps, you know,
14 they're in a vulnerable situation; for example, at a -- you
15 know, a homeless shelter or, you know, a battered women's
16 shelter or something like that where they didn't necessarily
17 want that information to -- to be released.

18 THE COURT: So then who would be the person to speak on
19 behalf of USDA?

20 MR. FINGERHOOD: We have Rachel Frisk, who we have
21 indicated before has already submitted a couple declarations
22 in this matter. But also I think as far as, you know, an
23 opt-in program, as I said, because the State has the
24 beneficiary information, you know, I would kind of defer to
25 them in the first instance as far as what alternatives would

1 be possible with respect to an opt-in program.

2 THE COURT: Okay, then. She's on the line?

3 MR. FINGERHOOD: Ms. Frisk? Yes.

4 THE COURT: And so then I will hear from her. Thank
5 you. I'll get back to you. I want you to come in later and
6 chime in and tell me any other legal matters you think the
7 Court should consider, if the Court hasn't done so already.
8 All right? Thank you.

9 MR. FINGERHOOD: Thank you, Your Honor.

10 THE COURT: And then after she speaks, I would like to
11 hear from the representative of Mr. Ted Henifin and to get
12 his perspective, through his counsel, on this matter.

13 Now, then, let's start off with Ms. Frisk. Hello?

14 MS. FRISK: Hello, Your Honor. This is Rachel Frisk.

15 THE COURT: And how are you today?

16 MS. FRISK: I'm okay. Thank you.

17 THE COURT: Now, spell your last name, please.

18 MS. FRISK: It's F-R-I-S-K.

19 THE COURT: F-R-I-S-K, Frisk.

20 MS. FRISK: Correct.

21 THE COURT: All right. Now, then, Ms. Frisk, how would
22 you resolve this matter?

23 MS. FRISK: What Mr. Fingerhood was just going over is
24 what we usually recommend when we are asked questions like
25 this. So when questions come in about how a state could

1 share data, SNAP data, SNAP household data, with another
2 party that does not meet the kind of limited exception in
3 the Food and Nutrition Act for data sharing, we suggest kind
4 of an outreach approach whereby the state agency can provide
5 some outreach to the SNAP recipients about a program and
6 have them opt in.

7 THE COURT: Describe the outreach program.

8 MS. FRISK: I'm sorry. You're breaking up. Can you
9 say that again?

10 THE COURT: Yes. Describe the outreach program.

11 MS. FRISK: Thank you. Typically, so the SNAP state
12 agency, using funding from the other entity but not SNAP
13 funding, would be able to contact their SNAP households and
14 share information on another program's benefits, such as the
15 one we're talking about today.

16 And in the -- you know, in the instance in Mississippi,
17 as just noted, they can probably speak best to how they
18 would do that. Every state agency might take a slightly
19 different approach, but -- whether it's, you know, as you
20 noted, through a postcard or a letter or a code or something
21 or some reference to their website or the relevant website
22 of the program, they can reach out to their SNAP households,
23 let them know about the potential benefit available to them,
24 and then take various approaches or -- not the State.

25 Sorry. Not Mississippi SNAP state agency, but let them know

1 these are various approaches they could take to opt in to
2 that program that is available to them as SNAP households.

3 THE COURT: Do you know whether this approach has been
4 taken anywhere else in the country?

5 MS. FRISK: So we -- we receive questions about this a
6 lot, which is a positive sign. States often are seeking
7 ways to support low-income households in various ways, such
8 as through tax credits that are state tax credits.

9 Recently we have received questions about states who
10 passed supports for college students and want to, you know,
11 provide those to low-income recipients. And so we get -- we
12 get questions about this particular thing often, and we do
13 recommend this approach often. I do not have information
14 on, you know, success rate, but this is -- this is typically
15 what we recommend.

16 THE COURT: So who handles that effort?

17 MS. FRISK: The state agency that is -- or -- sorry.
18 The state agency is -- is responsible for protecting the
19 SNAP data. The other party that doesn't meet the exceptions
20 for data sharing or other -- you know, receiving data on
21 SNAP households is responsible for kind of providing the
22 materials about their program to the state agency that
23 administers the SNAP program, and then the SNAP state agency
24 would be the one sharing it to their SNAP households. But,
25 again, SNAP funding cannot be used for that purpose of them

1 sharing that information.

2 THE COURT: So do you know of any outreach program
3 currently in effect in Mississippi whereby this approach is
4 being utilized?

5 MS. FRISK: I do not know of one in Mississippi, but
6 the state agency may -- may know of some.

7 THE COURT: And the state agency is described as what?

8 MS. FRISK: The SNAP state agency in Mississippi is the
9 Mississippi Department of Human Services.

10 THE COURT: Now, do I have anyone on the telephone from
11 the Department of Human Services?

12 MR. BLACK: Yes, sir. This is Patrick Black, general
13 counsel for the Mississippi Department of Human Services.

14 THE COURT: Have you followed this discussion?

15 MR. BLACK: Yes, sir. I -- we are a nonparty to this
16 action; however, we have provided the Court with a letter
17 that was dated February 22nd, 2024, advising of our position
18 on the matter as well as incorporating the DOJ's arguments.

19 We've also been in discussion with the third-party
20 administrator on ways in which this could be achieved.
21 However, to date, the third party had not been willing to
22 engage in those alternatives.

23 THE COURT: Name me those alternatives. How many are
24 there, first of all?

25 MR. BLACK: Well, they all require an opt-in approach,

1 and the third party's position to now has been that that
2 would be unsuccessful.

3 THE COURT: Say that again, please.

4 MR. BLACK: The opt-in approach -- it is my
5 understanding via communication that the opt-in approach
6 would not be successful, which is why they have not pursued
7 it.

8 THE COURT: Why wouldn't it be successful?

9 MR. BLACK: Their argument has been that low government
10 trust, low participation rate. However, I would point out
11 that SNAP is a client-driven program which you voluntarily
12 must come forward and apply for. So I -- I don't know that
13 that is a -- a good approach, because it's the same -- I
14 mean, I don't know that that would hold water in that our
15 clients come to us, just like the water clients would need
16 to come to them and say, we would like the lower rate.

17 THE COURT: So how many approaches are you suggesting?

18 MR. BLACK: What we -- like Ms. Frisk suggested, we
19 have -- we have said that we would send out a mailer to our
20 clients. However, we cannot -- the City of Jackson would
21 have to pay for our employees' time, the cost of the mailer,
22 any -- any cost associated with it. We can't utilize SNAP
23 funds for that type of outreach, so the City of Jackson
24 would have to pay for all of that.

25 We also, you know, suggested that there be some sort of

1 outreach, and that could be conducted by the City of
2 Jackson, whether that be community events, social media,
3 creating a website. Today, I can't speak to whether any of
4 those have been implemented.

5 THE COURT: Do you have any other suggestions?

6 MR. BLACK: No, sir. Unfortunately, all of our
7 suggestions are limited to some sort of opt-in protocol due
8 to the federal regulations.

9 THE COURT: It would be an opt-in program not to be
10 furnished out of SNAP money but through some other financial
11 means, such as self-help on behalf of the SNAP
12 beneficiaries. Is that what you are saying?

13 MR. BLACK: Well, it would be an opt-in in that if the
14 City of Jackson wished for us -- wished to pursue that sort
15 of alternative, they would have to pay for all of the cost
16 and expense for the City to -- I mean for the agency to
17 administer that. The recipient would receive some sort of
18 communication, whether it be email or mailer, and that they
19 would be directed, I assume, however the City of Jackson
20 would like to do it, that they, you know, go to a website or
21 go -- you know, call and allow -- and give them permission
22 to reach out to Mississippi Department of Human Services and
23 then we could verify their benefits, and then we would be
24 able to do that.

25 THE COURT: Okay. Any other suggestions that you think

1 would comport with the federal law?

2 MR. BLACK: No, sir. Unfortunately, under our reading
3 of the federal regulation, we cannot share this data with
4 the City of Jackson. They are not a federal assistance
5 program. So without a SNAP recipient's authorization, I
6 can't provide that.

7 And as Ms. Frisk has notified the Court in her letter,
8 any sort of disclosure by MDHS to the -- to the JXN Water
9 program could potentially result in a total withdrawal of
10 all SNAP funds as a breach of privacy. So we're --

11 THE COURT: Excuse me. But you are saying a total
12 withdrawal of all SNAP funds from the State of
13 Mississippi --

14 MR. BLACK: Right.

15 THE COURT: -- from the State of Mississippi?

16 MR. BLACK: That's correct. So USDA'S position is that
17 would be a breach of our privacy control under federal law,
18 and, therefore, it could -- could be entire SNAP program,
19 which serves 300,00 Mississippians, in jeopardy.

20 THE COURT: Okay. Have you done that before? Has --
21 has that program been subjected to that type of penalty
22 before anywhere else?

23 MR. BLACK: I can't speak to that, Your Honor.

24 THE COURT: And who would be the administrator or
25 administrative office that would make that determination?

1 MR. BLACK: The United States Department of
2 Agriculture.

3 THE COURT: And what office would that be? What
4 department?

5 MR. BLACK: That's USDA, Ms. Frisk, who you just spoke
6 with.

7 THE COURT: Okay. Then let me turn back to her again.
8 Do you have anything else you want to offer before I turn
9 back to her?

10 MR. BLACK: No, sir.

11 THE COURT: All right. Ms. Frisk?

12 MS. FRISK: Yes, Your Honor.

13 THE COURT: Do you agree with his comments?

14 MS. FRISK: I do.

15 THE COURT: And so then you are saying that unless
16 that -- no, not unless, but you're saying that should the
17 State comply with this order, that you would recommend
18 litigation and appeal this matter?

19 MS. FRISK: I'm sorry. Under the Food and Nutrition
20 Act, it is USDA's job to assess how the State administers
21 the program and whether it administers SNAP in mind with
22 statute and regulations. There are penalties in the Act
23 when a state does not administer the program consistent with
24 statute and regulations, and this prohibition on disclosing
25 SNAP recipient data except in limited circumstances is in

1 the statute.

2 So as noted, if Mississippi were to disclose this data,
3 they would be at risk of suspension or disallowance of
4 program funding, which could, yes, lead to a total
5 suspension from operating SNAP.

6 THE COURT: Okay. All right. Thank you. Just hold
7 on. I need to hear from counsel for Mr. Henifin, and then
8 I'll get back to you.

9 Now, counsel for Mr. Henifin. Yes?

10 MS. WILSON: Your Honor, counsel Paul Calamita is --

11 MR. CALAMITA: Your Honor, Paul Calamita on behalf of
12 the interim third-party manager. We appreciate your time
13 this morning.

14 Two things: First, Mr. Henifin did have conversations
15 with Mr. Black about these alternate opt-in approaches,
16 which we do not think would be successful, as similar
17 programs have had a penetration rate of less than 30 percent
18 where there are opt-in heating subsidy programs and other
19 subsidy programs. That's number one.

20 Number two, Mr. Henifin doesn't have the staff to -- to
21 go out and solicit and manage these folks. He was hoping to
22 get the existing list. This list -- the State has the list.
23 We feel we're a unicorn-type program. We do feel we're a
24 federal grant program for these folks. This is a program
25 implemented through federal court, an officer of the court,

1 and a federal stipulated order.

2 We don't think there's any precedential risk to either
3 the State or Federal Government that anybody else is going
4 to show up like this. So we feel like the risk to the
5 agencies was very small, very minor.

6 There was a federal order that gave them both political
7 and legal cover. We're disappointed that they feel they
8 have to appeal it, but we really think this is the only
9 way -- in getting the list is the only way to really provide
10 the benefit we're trying to provide.

11 And in terms of the financial stability of the utility,
12 getting the list lets 10,000 -- I don't know the exact
13 number because we've never seen the list. 10,000 we'll use
14 as -- I'll just use as a number, lets them pay an equitable
15 rate while also avoiding cost to the utility of having to
16 chase those people who have suffered so much from when they
17 can't pay the rates, the non-SNAP rate.

18 So to really implement the rate schedule that the
19 third-party manager implemented, without objection from any
20 of the parties, we need that list. I don't see why
21 Mr. Henifin can't be trusted with that list as an officer of
22 the court when every administrator, every school in the
23 state of Mississippi gets that list for both -- there's a
24 breakfast list and a lunch list. So I think they're making
25 mountains out of molehills in terms of the -- the

1 confidential.

2 And the one other thing I would say is we did have
3 conversations with Mr. Black, which we appreciated. I
4 wasn't aware, through those conversations, that Mr. Black
5 had clearance even to work with us on the opt-in programs
6 that he mentioned.

7 So, Mr. Black, if you now have clearance so that those
8 are actually viable opportunities, you know, that's one
9 thing. But even if they are viable, Mr. Henifin is adamant
10 he doesn't believe they will achieve what he's trying to
11 achieve.

12 Last word was we have two people in Jackson who have
13 signed up for the SNAP rate.

14 THE COURT: And what publicity was provided to those
15 two people to get them to sign in?

16 MR. CALAMITA: We have -- we have information about the
17 SNAP rate on our web page. Mr. Henifin has an outreach
18 coordinator, multimedia, which is something I don't do. But
19 I think we've pushed out into a lot of the normal media
20 channels, Facebook and whatever the social media.

21 Mr. Henifin has somebody who handles that. So I think we
22 have pushed that out, and last -- again, last I heard, there
23 were two people who had contacted us for the SNAP rate.

24 THE COURT: So what is your response to Ms. Frisk's
25 warning that if this information is provided, that

1 Mississippi's SNAP program could be put in suspension or
2 canceled?

3 MR. CALAMITA: Well, Your Honor, that would be the
4 classic Federal Government cutting off their nose to spite
5 their face, Your Honor. The idea that they would -- they
6 would harm 200 -- or 300,000 needy Mississippians because a
7 list was given to an officer of a federal court shocks me.
8 That's number one.

9 But to avoid even that the highly unlikely, if not
10 un- -- completely unrealistic, scenario, Your Honor, we had
11 consented to a stay of the order pending appeal. And the
12 appeal has a sole issue of whether the interim third-party
13 manager's rate schedule qualifies as a federal grant
14 program. If it does, we get the list. If it doesn't, we
15 don't get the list.

16 I will say, Your Honor, so my resolution would be let
17 them appeal. In the interim, I have an -- I would love to
18 hear from Mr. Black. Like, the email notice to the SNAP
19 folks who are eligible I think is -- would be of interest to
20 us as an interim step.

21 We did not like postcards, Your Honor, because, quite
22 frankly, I thought that was crazy. They can't give
23 Mr. Henifin the list, but we can send, through public mail,
24 all the SNAP people a postcard inviting them to check the
25 box and send it back? I mean, every mail carrier would know

1 they were a SNAP beneficiary. That just -- that didn't make
2 any sense to us, Your Honor. We do care about these
3 individuals' privacy.

4 So we are willing to stay Your Honor's order, which we
5 greatly appreciated, during appeal, and we would welcome the
6 opportunity if there is an email option -- even though that
7 would put an administrative burden on Mr. Henifin to sign
8 these people up, you know, we would do that during appeal.
9 We just don't think it's going to be as effective as getting
10 the list.

11 THE COURT: All right.

12 MR. CALAMITA: Now, Your Honor, while we have
13 Mr. Black, I would urge the Court to get an answer to that
14 question as to whether the State has clearance to support
15 Mr. Henifin on any opt-in options.

16 THE COURT: All right. Mr. Black, could you answer
17 that?

18 MR. BLACK: Yes, sir. I have made clear to all parties
19 that we're available for an opt-in that's within compliance
20 with the federal regulation. However, in response to the
21 idea of an email, we're happy to do that. However, emails
22 are not a required field when applying for SNAP benefits, so
23 I cannot guarantee what percentage of Jacksonians would
24 actually receive an email, because that is not a required
25 field when applying for SNAP benefits with the Department of

1 Human Services. And -- and if JXN Water does not want to
2 send out a postcard, then -- so we're -- we're limited in
3 our scope of how many potential families would actually be
4 reached.

5 THE COURT: Mr. Black, how many --

6 MR. BLACK: Yes, sir.

7 THE COURT: -- how many persons or entities are in
8 receipt of a list at present? And if you don't know the
9 number, describe for me those persons/entities who do
10 receive a list.

11 MR. BLACK: I'm assuming, Your Honor, that you're
12 asking about who we share our data with?

13 THE COURT: That's right.

14 MR. BLACK: Yes. I can speak to that. Counsel makes
15 reference to the school lunch program, and we do share our
16 data with the Department of Education. However, unlike the
17 municipal water system, the school lunch program is a
18 federal assistance program that is promulgated by statute of
19 the Federal Government. The Mississippi Department of
20 Education administers that benefit program, and so,
21 therefore, we have a limited ability, as a federal
22 assistance program, to share that data with the Department
23 of Education.

24 We have a memorandum of understanding with the
25 Department of Education which outlines the regulations and

1 confidentiality. We also -- it outlines the ability and the
2 process for sharing that data, how they are to
3 confidentially store and administer that program, and that's
4 our normal protocols for when we do. That is the only
5 instance that I'm aware of, at present, that we share any
6 sort of SNAP data.

7 THE COURT: So this sharing process and allowance is
8 not provided by statute?

9 MR. BLACK: It is provided by statute.

10 THE COURT: Or is this an agreement that the parties
11 made between themselves?

12 MR. BLACK: No. It is provided by statute, and,
13 therefore, we have a -- a data-sharing agreement which
14 outlines all of the protocols in which that share may occur.

15 THE COURT: Well, what is the statutory basis for that
16 allowance?

17 MR. BLACK: The statutory basis is 7 CFR, Section
18 272.1, I believe.

19 THE COURT: 7 CFR --

20 MR. BLACK: 272 --

21 THE COURT: 272 --

22 MR. BLACK: -- .1(c).

23 THE COURT: What does it say?

24 MR. BLACK: That it -- the relevant part, it requires
25 that we withhold that and we can only disclose the

1 information of SNAP applicants or recipient households in
2 the restricted allowances: one, persons directly connected
3 with the administration or enforcement or the provision of
4 the Food and Nutrition Act, other federal assistance
5 programs, federally assisted state programs providing
6 assistance on a means-tested basis to low-income
7 individuals, or general assistance programs which are
8 subject to the joint processing requirement as outlined in
9 Section 273.2(j)(2).

10 We can also allow it for persons directly connected
11 with the administration or enforcement of the program;
12 persons directly connected with the verification of
13 immigrant status; and persons directly connected with the
14 child support program; employees of the Comptroller
15 General's Office of the United States for auditing purposes;
16 local, state, or federal law enforcement officials under an
17 investigation; or local, state, or federal law enforcement
18 for potential investigations for crimes; local education
19 agencies administering the National School Lunch Program,
20 which I have referenced before. And that's it.

21 THE COURT: There's no general allowance as an
22 exception --

23 MR. BLACK: No.

24 THE COURT: -- where it's for the -- the health and
25 welfare of the recipients?

1 MR. BLACK: No, sir. There is no health or welfare
2 exception under the federal law.

3 THE COURT: And then in order for Mississippi to be
4 within the target of cessation of SNAP benefits, do you have
5 to go -- do you have to file something specifically?

6 MR. BLACK: I'm sorry, sir. Can you repeat your
7 question?

8 THE COURT: Would your agency have to file something
9 specifically asking for that possibility?

10 MR. BLACK: If we had a question related to whether or
11 not a sharing of the data fell within one of the limited
12 exceptions and we were -- we had a question or it was
13 ambiguous, we could go to the USDA, who is the federal
14 program administer, and seek guidance.

15 THE COURT: And then -- go ahead. Hello?

16 MR. BLACK: Yes, sir. We could -- we could go to
17 Ms. Frisk from the USDA and ask if that would qualify.

18 THE COURT: In this instance, can I resort to that? Or
19 can I have Mr. Henifin actually file a written request?

20 MR. BLACK: Well, I don't know that a written request
21 is necessary since Ms. Frisk has already made her position
22 known to the Court in a letter as well as that the -- JXN
23 Water does not qualify as a federal assistance program under
24 the current regulation.

25 THE COURT: And you say that she has already responded

1 in writing to that effect?

2 MR. BLACK: Yes, sir. As well as her oral testimony
3 here today.

4 THE COURT: Okay. Now, just hold on just for a moment.

5 MS. BLACK: Yes, sir.

6 THE COURT: And let me go back to the representative of
7 Mr. Henifin.

8 Counsel?

9 MR. CALAMITA: Yes, Your Honor.

10 THE COURT: Do you have anything else you would like to
11 offer on this controversy?

12 MR. CALAMITA: Your Honor, Mr. Black was correct in
13 listing the programs that can receive the information. The
14 catch-all is other government assistance programs, and we
15 believe that the rate schedule established by the interim
16 third-party manager constitutes an other government
17 assistance program.

18 Again, Your Honor, a very unique one that had -- that
19 really would not have any precedential impact. We don't
20 ever see -- I have done this 31 years, Your Honor. I have
21 never seen this situation before. Don't expect to see it
22 for the rest of my career. And they have a federal order
23 finding that this rate program is a -- constitutes a
24 government assistance program.

25 So there is no reason the State and Federal Government

1 have to appeal. They could simply provide the list without
2 any liability for either.

3 THE COURT: Okay. Well, then, let me go back to
4 Mr. Black.

5 MR. BLACK: Yes, sir.

6 THE COURT: So, Mr. Black, if you furnish the list, who
7 would you expect to be aggrieved by the furnishing of such?
8 You don't expect the SNAP beneficiaries to complain, so then
9 who would you expect to claim victimhood by the furnishing
10 of the information?

11 MR. BLACK: Well, the United States Department of
12 Agriculture and both MDHS, administers of the SNAP program,
13 do not agree with counsel's position that a municipal water
14 system qualifies as a federal assistance program as outlined
15 under the federal regulations.

16 This, again, is a municipal water system that
17 currently, we concede, is under a federal consent decree,
18 but that does not qualify it as a federal assistance
19 program.

20 Additionally, I would argue that it is short-sighted by
21 JXN Water to try to have this for three years because
22 once -- at that conclusion of the federal consent decree,
23 they no longer have any ability to receive SNAP data. And
24 SNAP -- SNAP benefits are only for short periods of time.
25 So all of those people may have been removed from the SNAP

1 roll and you're not going to have a means to obtain that
2 data.

3 So, again, this is a -- a Band-Aid to a bigger problem,
4 which is why you need an opt-in approach.

5 THE COURT: Now, let's talk about this matter of an
6 appeal. There was an agreed order that would move the right
7 to appeal to this coming Friday. Why did you pick this
8 coming Friday?

9 MR. BLACK: Your Honor, I can't speak to that. The
10 Mississippi Department of Human Services is not a party to
11 this matter. I think you'll have to speak with DOJ.

12 THE COURT: All right. Let me go back to
13 Mr. Fingerhood, then. Mr. Fingerhood, do you know the
14 answer to that?

15 MR. FINGERHOOD: Yes, Your Honor. We have been advised
16 that was the deadline that was suggested by the third-party
17 manager, and we confirmed with our appellate folks that they
18 could file it by that date. They may be able to file it a
19 day or so early. We are already Tuesday, so it would be
20 this Friday that it would have to be filed by. So...

21 THE COURT: And why this Friday?

22 MR. FINGERHOOD: Oh, it could be filed before, but --

23 THE COURT: No.

24 MR. FINGERHOOD: -- possibly before then, but that --

25 THE COURT: And why not after?

1 MR. FINGERHOOD: Oh. Well, that -- I believe the
2 third-party manager wants to get it filed as soon as
3 possible so that process starts.

4 THE COURT: So there's nothing magical about Friday?

5 MR. FINGERHOOD: No. No. It's just I think the point
6 was sooner rather than later was why they picked this
7 Friday.

8 THE COURT: I see. All right. Thank you. I'll come
9 right back to you in just a moment.

10 (An off-the-record discussion was held.)

11 THE COURT: Mr. Fingerhood, could you go back to the
12 podium?

13 MR. FINGERHOOD: Yes, Your Honor.

14 THE COURT: Mr. Fingerhood, I want to do some research
15 on this that might make an appeal unnecessary, or I might
16 agree with Henifin's attorney to say go through the appeal
17 and let's get an answer from the next court. But before any
18 of that happens, I would like to study this statute and a
19 couple of decisions that might weigh on this particular
20 matter.

21 So here's what I'm proposing in the short term; that
22 is, you all had an agreement to stay this matter until this
23 coming Friday. I would like to have an agreement to stay
24 this matter until Friday week. Not this coming Friday but
25 the Friday thereafter. That will give me time to look

1 through the law on this particular issue and to answer some
2 other questions I have about this matter, and then for this
3 Court to initiate a status conference Thursday week; that
4 is, the day before that, so not this Thursday but Thursday
5 week. Then I should be completely through with my recess --
6 my research and have my position all outlined.

7 So we would not -- we would go past this week, and then
8 next week on Thursday, I'll have a status conference to tell
9 you what I think about this matter. And then on -- and then
10 Friday, if the determination is that you should proceed with
11 your appeal, then you will do it at that time, if you are
12 going to do it at all.

13 But meanwhile, that will give this Court enough time to
14 look at some thoughts that it has on this matter, and I
15 might not wait until Thursday to actually reveal those
16 thoughts. I might send out a letter before then for the
17 parties to consider. But certainly by Friday week, then
18 I'll be finished with anything I need to look at.

19 But I do have some ideas I would like to explore.
20 That's why I wanted to call a status conference today to see
21 precisely what is being said here about this matter.

22 Now, Mr. Fingerhood, what about that?

23 MR. FINGERHOOD: I would be amenable to that, Your
24 Honor. I think we could take the proposed order and perhaps
25 change the date and maybe insert, as you suggested, the

1 Thursday -- I don't have a calendar, but whatever those
2 dates are, the Thursday before -- a week from the 31st. I
3 guess it would be the 7th.

4 THE COURT: Okay.

5 MR. FINGERHOOD: So the 6th would be the status
6 conference; the 7th would be -- the stay would run until the
7 7th.

8 THE COURT: That's right. It would evaporate then, if
9 need be. We might make a decision -- we might come together
10 on some of my ideas before that. I do have some other ideas
11 I would like to put forward. So that will give me time to
12 look at them and see if they have any vitality. Now --

13 MR. FINGERHOOD: Can I just double-check with the other
14 half of my brain trust?

15 THE COURT: Okay.

16 MR. FINGERHOOD: You already met the other one.

17 THE COURT: Okay.

18 MR. BLACK: Your Honor?

19 THE COURT: Let me hear from Mr. Fingerhood first.
20 Yes?

21 MR. FINGERHOOD: Just to clarify, yes, the stay, I
22 think as we described in the proposed order, would run
23 until, I guess, Friday, the 7th. Is that what Your Honor is
24 proposing? And then we would file -- if it was determined
25 that we wanted to invoke our appellate rights, that would be

1 when we would need to do that.

2 THE COURT: Okay. Thank you.

3 Now, then, I heard someone on the telephone. Who was
4 that?

5 MR. BLACK: Yes, sir. Your Honor, this is Patrick
6 Black for MDHS.

7 I just wanted to let the Court be aware, I will not be
8 available for the status conference on the 6th,
9 unfortunately. However, I am a nonparty, but I will not be
10 able to -- if the Court needed my input or had any questions
11 for me. I will be available on that following Monday,
12 though.

13 THE COURT: Well, then, we could get you on telephone.
14 What about that, like you are now? You will not be
15 available, period?

16 MR. BLACK: No, sir, I will not be, unfortunately.

17 THE COURT: Okay. Now, we are not going on a vacation
18 to Hawaii, are we?

19 MR. BLACK: Alaska.

20 THE COURT: I should have known. Okay. You would say
21 Alaska. You don't know how many times I have planned a trip
22 to Halaska -- Alaska and had it fall through for something
23 like this. Every time I plan a trip to Halaska -- Alaska --
24 now I got Halaska. But every time I plan a trip to Alaska,
25 something goes wrong. But okay. We'll work it out with

1 you.

2 Okay. Mr. Fingerhood?

3 MR. FINGERHOOD: Yes, Your Honor. Just one more
4 clarification. I think this was also in the proposed order.
5 But if we do, in fact -- the United States does, in fact,
6 pursue its appellate rights, we would want the stay, of
7 course, to last until, you know, the decision is rendered
8 and the mandate is issued and all that process.

9 THE COURT: Yes, I understand.

10 MR. FINGERHOOD: Okay.

11 THE COURT: Then do I have an objection from anyone?

12 All right. Silence means something. I have not heard
13 anything yet. Going, going, gone. All right, then.

14 Mr. Fingerhood, would you circulate the modified order?

15 MR. FINGERHOOD: I will, Your Honor.

16 THE COURT: All right. And then once it reaches my
17 desk, then I'll sign it. In the meantime, we'll start doing
18 our research and then putting in good order the suggestions,
19 if any, that we come up with so that we can try to deal with
20 this expeditiously.

21 All right. Thank all of you for being available in
22 person and by phone. I'm sorry about all of the
23 difficulties we had this morning. But we had a lot of
24 difficulties, and my stalwart courtroom deputy been working
25 on this matter all morning long trying to get it so that it

1 would cooperate with us. But try as she could and enlisting
2 all the support in the building of our IT experts, we didn't
3 quite get it like we wanted to.

4 We'll try to determine what our problems are with the
5 system, because this is not the first time we have had
6 problems with the system, but we'll get it all together, and
7 I thank all of you for being so patient with us.

8 Next time, I think I'll just have to put my own muscle
9 to it and show them how we are supposed to do this stuff.
10 Of course, somebody will have to show me the on and off
11 button, but as soon as I get past that -- but as soon as I
12 get that, I'll be dealing. So I just want you all to know
13 that we shouldn't have this again if I'm putting my muscle
14 on it.

15 But thank you all so much, and I'm signing off, and
16 I'll be back in contact with you. Thank you much.

17 (Court adjourned at 12:06 p.m.)

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COURT REPORTER'S CERTIFICATE

I, Caroline Morgan, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically reported by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 30th day of May, 2024.

/s/ Caroline Morgan, CCR

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